

1954

Jan. 18

Dr. Hilton C. Bulcy
Commissioner of Education
State Board of Education
State House Annex
Concord, New Hampshire

Dear Dr. Bulcy:

This is to acknowledge your letter of December 24, 1953 in which you ask for an opinion from this office as to (1) whether the School Board of Barrington had the authority to expend amounts which equal less than 5% of its latest assessed valuation; (2) whether the said Board had the authority to issue less than the amount appropriated at the March 1953 annual meeting; and (3) should the Board of Investigation, established by chapter 5, Laws of 1951, as inserted by chapter 9, Laws of 1953, in their review, examine the entire project or merely confine themselves to the proposed additions.

It is the opinion of this office that questions 1 and 2 above need not be considered since an answer would not materially assist the Board of Investigation.

It is further the opinion of this office that under the provisions of chapter 5, Laws of 1951 as amended, the Board of Investigation should consider the entire project as though no building or expending of funds had taken place.

Section 2 of the said chapter provides that a school district may vote to issue bonds or notes for the purposes of construction of new buildings or alteration of existing buildings in an amount in excess of 5% of the latest assessed valuation subject to taxation, but not in excess of 8% thereof, in accordance with the conditions set forth in sections 4, 5, 6 and 7 of the chapter. Section 2 also provides that a certified copy of the record of the action of the school district, shall forthwith be presented to the Commissioner of Education.

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Section 4 establishes the Board of Investigation; section 5 provides for a hearing by the Board upon receipt of the record provided under section 2; section 6 provides that upon the consideration of the financial needs of the district, if in the best interest thereof, the Board may approve such proposal. However, if the Board disapproves the proposal, the action of the school district shall be null and void.

In view of the statute there can be no doubt but what the legislature intended that in any instance in which a school district voted to exceed the net borrowing capacity of 5% of the latest assessed valuation, such a proposal must be submitted for approval to the Board of Investigation.

The Board now has before it such a proposal. Its procedure need not vary in this instance because of any prior action of the School Board of Barrington. That has no effect upon the duties of the Board as provided by law.

Your attention is further invited to section 7 of chapter 351 of the Laws of 1953 relative to the legalizing of the March 9, 1953 annual school district meeting, which apparently established a separate authorized indebtedness for Barrington. This statute further emphasizes the necessity for an approval of the action proposed by the Board of Investigation.

Very truly yours,

Arthur E. Bean, Jr.
Assistant Attorney General

AMB, Jr/T